IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 33289 of 2005(K)

PETITIONER:

C.P.MOHAMMED, CHANNAPPURA HOUSE,
KAVARATTI, UNION TERRITORY OF LAKSHADWEEP.

BY ADV. SRI.P.K.VIJAYAMOHANAN
SMT.A.KUMARI MINI

RESPONDENTS:
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1. **THE DIRECTOR GENERAL OF SHIPPING,**
   GOVERNMENT OF INDIA, JAHAZ BHAVAN,
   WALCHAND HIRACHAND MARG, MUMBAI-400 001.

2. **THE DEPUTY DIRECTOR GENERAL OF SHIPPING,**
   GOVERNMENT OF INDIA, JAHAZ BHAVAN,
   WALCHAND HIRACHAND MARG, MUMBAI-400 001.

3. **THE SHIPPING MASTER,**
   GOVERNMENT OF INDIA, MINISTRY OF SHIPPING,
   NAVBHAVAN, 10 R.K.MARG, BELLARD ESTATE,
   MUMBAI-400 001.

4. **THE PORT OFFICER,**
   UNION TERRITORY OF LAKSHADWEEP,
   DEPARTMENT OF PORT, KAVARATTI.

BY ADV. SRI.DENU JOSEPH, ADDL.CGSC for R1 to R3
SRI.PR.RAMACHANDRA MENON,SC,LAKSHADWEEP for R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.33289/2005 K

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE COVERING LETTER NO.1/13/98-PORT (3) DTD. 01/02/2001 OF THE 4TH RESPONDENT.

EXT.P2: COPY OF THE COMMUNICATION NO.19/2/2000 SHIPPING DTD. 7/07/2003 FROM THE DEPUTY DIRECTOR, SHIPPING AND TRANSPORT, UNION TERRITORY OF LAKSHADWEEP.

EXT.P3: COPY OF THE COMMUNICATION NO.CDC/POK/(2)/2001/4614 DTD. 3/08/2004 OF THE 3RD RESPONDENT.

EXT.P4: COPY OF THE COMMUNICATION DTD. 23/12/2004 OF THE PETITIONER.

EXT.P5: COPY OF THE COMMUNICATION NO.7/LD.9/98/V DTD. 12/06/2005 OF THE FORWARD SEAMEN'S UNION ADDRESSED TO THE 2ND RESPONDENT.

EXT.P6: COPY OF THE COMMUNICATION DTD. 25/08/2005 OF THE PRESIDENT OF THE CENTRE OF INDIAN TRADE UNIONS BEFORE THE 2ND RESPONDENT.

EXT.P7: COPY OF THE MERCHANT SHIIPPING (CONTINUOUS DISCHARGE CERTIFICATE-CUM SEAFARERS IDENTITY DOCUMENT) RULES, 2001 DTD. 19/06/2001.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE NOTIFICATION NO.8(26)CR/2000 DTD.4/06/2001 SIGNED BY 1ST RESPONDENT.

EXT.R1(B): COPY OF THE APPLICATION SUBMITTED BR. MR.M.P.MOOSA WITH THE COVERING LETTER OF THE 4TH RESPONDENT DTD.23/05/2000.

EXT.R1(C): COPY OF THE LETTER NO.15(53) CR/98-II DTD. 13/07/2004.

EXT.R1(D): COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT DTD. 3/08/2004.

EXT.R1(E): COPY OF THE LETTER NO.16(53) CR/98-II DTD. 8/11/2004.

/TRUE COPY/

Kss

K.M.JOSEPH, J.

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WP.(C) No. 33289 OF 2005

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Dated this the 22nd day of January, 2007.

JUDGMENT

Brief case of the petitioner is as follows:

Petitioner is employed as Boat Lascar under the fourth respondent. Under the Merchant Shipping Act, 1958 and Merchant Shipping Rules, it is mandatory for the crew of sea going vessels to have Continuous Discharge Certificate (hereinafter referred to as CDC) issued by the Shipping Master appointed under Section 11 of the Merchant Shipping Act, 1958. Application has to be submitted through the Controlling Officer. Petitioner submitted his application through the fourth respondent, which was received on 13.2.2001 in the office of the third respondent. That application along with the application of one Sri.P.Moosa, under the common covering letter was forwarded by the fourth respondent. There were several reminders. It is the case of the petitioner that CDC was issued to the other applicant, whose application was submitted along with the application of the petitioner. Ext.P1 is the covering letter of the fourth respondent forwarding the applications of the petitioner and Sri. Moosa. Ext.P3 is the

communication dated 3.8.2004. In Ext.P3 it is stated that the petitioner's request being considered it is found that an application dated 27.1.2001 was received in the office on 13.2.2001. It is further stated that the cut off date to receive the application was 12.6.2000 in the case of the petitioner. The claim of the petitioner for CDC was rejected. Ext.P4 is a representation by the petitioner to the Shipping Master. Ext.P5 is a communication of the Union addressed to the second respondent pointing out that the application of Sri. Moosa is allowed while the application of the petitioner is rejected. Ext.P6 is filed by the CITU voicing the same complaint.

2. A counter affidavit is filed, wherein it is stated as follows:

> "The Government of India, Ministry of Surface Transport, vide its letter No.B-11015/15/94-MT dated 12th October, 1994, constituted a Committee headed by Shri Praveen Singh, former Director General of Shipping in order to examine the issuance of Continuous Discharge Certificates (hereinafter referred to as "CDC") freely to all applicants and related matters thereon. The Committee deliberated on the issues at length and submitted its report to the Government in September, 1995)."

It is further stated that at a tripartite meeting held in the Directorate General of Shipping, under the Chairmanship of the Director General of Shipping a decision was taken by the Director General to fix 31.5.2000 as the cut off date for accepting applications for CDC among other things. It is further stated that Minutes is forwarded to all representatives of Ship owners. It is stated that in view of the above decision arrived at the Director General of Shipping and Ex-officio Additional Secretary to the Government of India in exercise of powers conferred by Clause (1) of Section 456 of the Merchant Shipping Act, 1958 read with Notification issued by the Government of India delegating the said powers to the Director General of Shipping reiterated the above decision taken in the meeting on 24.4.2000 and issued DGS order No.5 of 2001 whereby it was decided that in view of the discussion held in the tripartite meeting held on 24.5.2000 no fresh applications for issuance of CDCs under Rule 4(9) of the Merchant Shipping (CDC) Rules, 1993 as amended in 1997 will be entertained by any of the Shipping Masters on or after 31.5.2000 or the date of receipt of the minutes of the tripartite meeting dated 24.4.2000,

whichever is later. Ext.R1(a) is the said notification. It is further pointed by Notification dated 19.6.2001 the Central Government promulgate Merchant Shipping (Continuous Discharge Certificate) Rules 2001, wherein the incorporated sub-rule 4(9) itself was deleted. It is stated that case of the petitioner is not covered by Merchant Shipping (CDC) Rules, 2001. It is also stated that a series of Rules were in existence from 15.12.1997 upto 31.5.2000, that is, more than two years and the petitioner did not take benefit of the Rule, where more than 2000 seamen took benefit of this rule and were issued CDCs. It is pointed out that in any case, the Government had not intended this to be an open ended scheme and the intention of the Government to issue CDCs to the seamen on the basis of sea experience was to regularise the status of seamen by issuing CDCs as a one time measure and thereby the existing seamen serving on home trade/passenger and off shore supply vessels were enabled to obtain CDCs under Merchant Shipping (CDC) Rules, 1997 solely on the basis of their sea experience without applying the criteria of age, educational qualificiation and pre-sea training which are mandatory for every new entrant in the

seafaring profession as prescribed under the Merchant Shipping (CDC) Rules, 2001 notified on 19th June, 2001. It is further stated that however the petitioner did not avail of the opportunity given by the Government of India for more than two years to apply for CDC within the prescribed time limit of 31.5.2000 or date of receipt of minutes as respondent No.3 had received on 12.6.2000, he accordingly issued an office order dated 20.6.2000 and fixed 12.6.2000 as last date. In the case of Sri.P.Moosa, it is pointed out that there is an earlier application received directly on 31.5.2000 along with the covering letter dated 25.3.2000 from the Port Officer, Lakshadweep before the cut off date and it is based on the same that CDC was issued to Moosa. Ext.R1(b) is the photo copy of the application given by Sri. Moosa along with the covering letter. Case of discrimination is repelled. Ext.R1(d) is the further rejection of the petitioner's claim apparently based on subsequent representation. There are case of other rejection also. It is pointed out that petitioner's case cannot be considered under 1991 Rules.

3. Petitioner filed a reply affidavit, wherein he would contend

that there is no reference to any earlier application in the case of Sri.Moosa. It is contended that petitioner's case should be considered under the new Rules, which came into force on 19.6.2001. Ext.P7 is the Rules made in 2001. One year is the time from the date of the notification for submitting application. It is therefore stated that application is within the stipulated time and therefore the application of the petitioner, which was rejected on 3.8.2004 when the Rules were in force from 19.6.2001 is stated to be incorrect. The Rules never prescribed a cut off date and there is no sanctity to the executive order prescribing a cut off date, it is stated.

4. There is no challenge to the executive order as per which the cut off date is fixed and it is on the basis of the same Ext.P3 is issued. Whatever that be, even the case based on Ext.P7 does not appear to be tenable. Even assuming that the reasoning for not considering the application under Ext.P7 as stated in the counter affidavit is not acceptable, I would notice that under Ext.P7, eligibility is prescribed among other conditions with reference to age to be determined with reference to closing date for receipt of the application. It is not in

dispute that closing date is 18.6.2002. going by the affidavit filed by the petitioner in this court, petitioner is aged 45 in the year 2005. It is clear that petitioner was above 40 years as on the crucial date. In such circumstances, I do not think that there is merit in the case based on Ext.P7.

Accordingly, the writ petition fails and it is dismissed.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.